

# Legal research on global environmental change of Metro

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## Legal research on global environmental change of METRO

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### **Introduction: background of the institute**

This chapter provides an overview of some of the research that has been done within the institute METRO, the Maastricht European Institute for Transnational Legal Research of the Faculty of Law of Maastricht University.

It should be mentioned that being primarily a legal institute, most of the research of METRO is within the scope of the Institutional Dimensions of Global Environmental Change (IDGEC) Science Project of IHDP (International Human Dimensions Programme on Global Environmental Change).

METRO was established in 1991 as the research institute of the Faculty of Law of Maastricht University with a focus on comparative, European and international legal research. Since the academic director of METRO, Michael Faure (who has worked with METRO from the beginning) holds a chair in comparative and international environmental law, a lot of METRO's research has focused on environmental law and policy.

In addition to Michael Faure, METRO has as few collaborators who focus their research on environmental law and policy. First Jürgen Lefevere focused his research on European environmental law, before he began a research fellowship at the Foundation of International Environmental Law and Development (FIELD) in London. His place was taken by David Grimeaud, who focuses a large part of his research on European environmental law and the legal aspects of climate change. Marleen Hertoghs focuses on public environmental and international environmental law.

METRO performs contract research for various Dutch institutions (mostly the Ministry of the Environment and that of Justice) and participates in various projects initiated by the European Commission or the European Science Foundation. In addition to doing contract research, METRO can also call on the expertise of the staff of the law school of Maastricht University. More specifically, Dr René Seerden, senior lecturer at the public law department, has published widely in the area of comparative environmental law<sup>1</sup> and participates in various METRO projects.

METRO relies on a variety of collaborative research projects and contacts with other institutions and organizations. Since a large part of the environmental law and policy work is multidisciplinary, METRO often participates in projects initiated by Professor Timothy Swanson at CSERGE. In this respect METRO has participated in a variety of projects concerning the efficient regulation of pesticides, sponsored by the European Science Foundation<sup>2</sup>. Recently METRO participated in a project on integral water management in Cyprus, financed by the EU, which was also run by Professor Swanson. Within the framework of this project, David Grimeaud provided an extensive analysis of the new European framework directive on what<sup>3</sup> this cooperation with other institutions needs, in order to obtain a multidisciplinary focus, whereby METRO provides the law and policy input.

Moreover, the environmental legal research of METRO is imbedded in the Ius Commune Research School. In that framework METRO is cooperating with the Institute for Environmental and Energy Law of the Catholic University of Leuven, which is headed by Professor Kurt Deketelaere. This cooperation with the Leuven institute has lead to many joint publications<sup>4</sup>.

### **General studies on European and international environmental law**

Originally the focus of METRO's environmental research was on the way in which the law could be used to remedy transboundary environmental pollution. Questions addressed were, for example, in what respect national law can be used and applied to remedy transboundary environmental pollution<sup>5</sup>, and under what conditions a legal transboundary transport of manure could take place<sup>6</sup>.

A great deal of the research within the framework of the Ius Commune Research School focuses on the question whether a harmonized environmental legal system is necessary to remedy transboundary environmental pollution. This question has various aspects, e.g. whether, from a comparative legal angle, there are in fact that many differences between the various environmental legal systems in Europe which may hinder a legal integration. These issues were analysed by Seerden from a comparative public legal perspective<sup>7</sup> and, with respect to administrative law applying to soil pollution, by Deketelaere and Seerden<sup>8</sup>. Betlem and Faure addressed differences as far as environmental liability for soil pollution is concerned between a variety of legal systems<sup>9</sup>. Many more studies could also be cited.

Second, an important part of this research also focuses on the question whether centralization or harmonization is indeed necessary to remedy environmental pollution. This research fits, at the European level, in the subsidiarity debate. Most of this has been undertaken by Faure and Lefevre, but also by Anthony Ogus, who is a research professor at METRO Institute. In most of these publications, the METRO scholars take a critical approach towards the European tendency to strive for a harmonization of all legal rules and standards, since this would lead to a harmonization of conditions of competition.

Furthermore a critical analysis of international environmental agreements has been undertaken. For instance, Hertoghs has examined in what way the Netherlands complies with international environmental obligations<sup>10</sup>, and Faure/Lefevre have used compliance theory (as developed by Chayes/Young and Jacobson) to test how the structure of international environmental agreements could lead to an improvement of the compliance with these agreements.

Moreover, in a variety of studies a rather critical approach has been taken towards international environmental agreements, arguing that to some extent these agreements seem to serve the interest of industrial lobby groups more than the improvement of environmental quality. It was argued that this is notably the case for the conventions regulating liability for nuclear accidents<sup>11</sup> and as far as oil pollution is concerned<sup>12</sup>.

More particularly the studies on compliance theory provided a bridge to the new research focus of METRO: climate change.

### **Current climate change projects**

Currently METRO is involved in a project concerning international trade and climate change financed by the Dutch National Research Programme on Global Air Pollution and Climate Change.

This project on climate change policy and trade is a cooperation between the Institute for Environmental Studies of the Free University of Amsterdam, the Economics Faculty of the same university and the Institute for Globalization and Sustainable Development (GLOBUS). Within this project, METRO is performing the legal analysis and investigating more particularly how certain climate change related trade measures can be made to comply with EU and WTO legislation. Thus, within the framework of this project METRO is analysing the exact nature and extent of the legal obligations contained in the Framework Convention on Climate Change and in the Kyoto Protocol. It is also examining whether potentially trade restricting measures could be adopted by either nations individually or by a regional organization such as the EC against a country which, it is claimed, is not fulfilling its obligations. Thus, generally attention is given to the relationship between trade and environmental protection (more particularly climate change). One of the first results of this project was a paper by Grimeaud discussing the transport policy of the EC<sup>13</sup>. Moreover, Grimeaud recently provided an extensive overview of the international climate change regime with a focus on the policy and legal aspects. This extensive study was published in successive issues of *Environmental Liability*<sup>14</sup>.

Within the framework of this project, Grimeaud will also examine the relationship between climate change policy and WTO legislation on the one hand and European environmental law on the other hand.

Given the increased focus of METRO's research on climate change, METRO was appointed as official observer to the Framework Convention on Climate Change. A formal decision in that respect was taken in November 2000 at COP 6 in The Hague. Thus METRO is allowed to participate as observer at the meetings of the conference of parties and can obtain first-hand information to be used in its future research.

METRO recently organized the conference 'Institutions and Instruments to Control Global Environmental Change' (Maastricht, 21-22 June 2001). The aim of the conference was to further promote research with respect to the social aspects of global environmental change in the Netherlands; a report on this conference is provided elsewhere in this volume. The conference was financed by the Netherlands HDP Committee and the Dutch National Research Programme on Global Air Pollution and Climate Change (NOP) prepared under the academic responsibility of Joyeeta Gupta (Institute for Environmental Studies of the Free University of Amsterdam), Andries Nentjes (Faculty of Law, University of Groningen) and Michael Faure (METRO, Maastricht). The conference proceedings will be published.

Finally, METRO recently became involved in a new project which is being executed for the Commission on CO<sub>2</sub> Emissions Trading in the Netherlands. This commission's task is to examine under what conditions a national system of CO<sub>2</sub> emissions trading in the Netherlands would be feasible. METRO has been asked to examine the legal aspects of such a national system of emissions trading. In this respect, it will be analysed whether such a national emission trading system is compatible with EU and international trade law (especially WTO decisions). In addition, it will be examined how such an CO<sub>2</sub> emission trading scheme could be shaped from a legal perspective. This project is being executed by David Grimeaud and Marjan Peeters, who joined the public law department of the Faculty of Law of Maastricht University in January 2001. In 1992 she wrote a dissertation on the legal aspects of tradable permits<sup>15</sup>, and will hence be involved in many of the METRO projects on emissions trading and climate change.

## Plans for the future

Since recently, the focus of the environmental legal research of METRO includes not only traditional comparative, European and international law, but also the legal aspects of climate change. This is a result of the growing interest in climate change and its legal aspects, and of the fact that METRO has expertise in this field in the persons of David Grimeaud and Marjan Peeters.

METRO hopes to continue this research in good cooperation with the partners mentioned above, especially the Institute for Environmental and Energy Law of the Catholic University of Leuven. So far, the legal community in the Netherlands and Belgium has not shown much interest in the legal aspects of climate change, and METRO hopes to some extent to be able to fill that gap by continuing to focus on environmental legal and policy research and by participating in multidisciplinary projects with its partners.

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